IN THE HIGH COURT OF DELHI

RSA No.292/2007

Shiksha Devi & Ors. ..... Appellants
! through: Mr. S.S.Tomar, Advocate

VERSUS

$ Gaon Sabha Rithala & Ors. ..... Respondents
^ through: None.

% DATE OF DECISION: 06.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. Dispute pertains to agricultural land in village Rithala which as stated in the plaint was acquired vide award No.16/85-86 and vested in the Union of India.

2. Contemporaneous with the proceedings for acquisition of the land, the revenue assistant had initiated proceedings under Section 81 of Delhi Land Reforms Act on the ground that the land had been put to non-agricultural use. A conditional order required by law was passed giving 3 monthstime to the recorded bhuomidars to restore the land to agricultural use. It was followed by a vesting order dated

26.4.1985 holding that since land was not restored to agricultural use it stood vested in the Gaon Sabha.

3. The land owners had a grievance that proceedings under Section 81 were concluded without notice to them. They moved an application before the Revenue Assistant for review of the order dated 26.4.1985. Review was dismissed on the ground that since award was pronounced and lands had vested in the Central Government pursuant to the acquisition no proceedings under Delhi Land Reforms Act,1954 chould be continued.

4. The land owners had a problem. Before the award was published, land was shown as vested in Gaon Sabha. Thus, no compensation could flow to them. Their grievance that vesting order was without following principles of natural justice could not be got adjudicated under the Delhi Land Reforms Act,1954. They filed a civil suit stating in the plaint (para 1) that they were the recorded bhumidars of the land. That the land was acquired vide award No.16/85-86 and was vested in the Union of India (para 2). They stated that the conditional vesting order and the final vesting order were without notice to them. They prayed that declaration be issued that the land acquired vide award No.16/85-86 was owned by them as Bhumidars and that vesting order dated 26.4.1985 was illegal.

They sought a permanent injunction against the Land Acquisition Collector restraining him from making any payment to the Gaon Sabha.

5. The learned Trial Judge has held that remedy of the appellants was to proceed under Section 18 of the Land Acquisition Act. Learned Appellate Judge has held that the vesting order ought to have been challenged by way of appeal before the Additional Collector under the Delhi Land Reforms Act.

6. Result is that for different reasons suit filed stands dismissed.

7. Prima facie, view taken by the learned Trial Judge is correct.

8. My reason for the same is the ratio of law as is culled out from the decision of the Division Bench of this Court reported as 94 (2001) DLT 348 *Pyare Vs. Financial Commissioner & Ors.* and the decision of the Supreme Court reported as AIR 2003 SC 942 *Sharda Devi Vs. State of Bihar*. In para 23 and 28 of the decision in *Sharda Devi's* case (supra) it was observed as under :-

> "23. The two provisions contemplating power of the Collector to make reference as contained in Section 18 and Section 30 of the Act need a comparative study. Under Section 18 the subject-matter of reference can be a dispute as to any one or more of the following:

(i) as to the measurement of the land, (ii) as to the amount or the quantum of the compensation, (iii) as to the persons to whom the compensation is payable, (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the subject matter of dispute can be: (i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable. Though the expression employed in Section 18 is '*the amount of compensation*' while the expression employed in Section 30 is '*the amount of compensation or any part thereof*, this distinction in legislative drafting is immaterial and insignificant and a dispute as to entitlement or apportionment of part of the compensation would also be covered by Section 18 of the Act on the principle that the whole includes a part too. Thus, at the first blush, it seems that Section 30 overlaps Section 18 in part; but as will be seen shortly hereinafter, it is not so.

28. Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter, whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on are such illustrative factors which may enter into the consideration by the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In

case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit."

9. The Division Bench of this court in para 8 of the decision in *Pyare's* case (supra) observed as under :-

"8. It was submitted by Mr. Ramesh Chandra, leaned senior counsel for the petitioner that in case it be held that section 185 of the Delhi Land Reforms Act has no application to the present case since bhumidhari rights stand extinguished on acquisition of the land in question, the petitioner will certainly have a right to file a civil suit to establish his right as a Bhumidhar of the land. We have considered the submission of the learned senior counsel. Under section 9 of the Code of Civil Procedure, 1908, the courts have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In case the petitioner wishes to establish bhumidhari rights over the land after acquisition but with reference to a period prior to the acquisition of the land, for the purposes of claiming compensation the suit will not be maintainable as the question relating to apportionment of compensation and all questions incidental thereto including the question as to who is entitled to receive compensation, as already noted, are to be gone into by the Collector under section 11 of the Land Acquisition Act. Again, in reference proceedings under section 18 of the Land Acquisition Act, power has been conferred upon the District Judge to determine the question as to the persons to whom compensation is payable. Since the question as to who is entitled to receive compensation is required to be determined by the Collector

> under section 11 of the Land Acquisition Act and the District Judge in reference under section 18 of the land Acquisition Act, a suit for the purpose of establishing bhumidhari rights over the land for the purpose of claiming compensation is barred by implication, the Land Acquisition Act being a self-contained code. In case the petitioner seeks to establish bhumidhari rights over the land for the purpose other than seeking compensation, the remedy by way of civil suit would be available to him."

10. Concluding sentence in para 8 of the decision of the Supreme Court and the Division Bench of this court needs a little explanation.

11. In both the decisions it is observed that if the Land Acquisition Collector chose to decline a reference under Section 18 or Section 30 of the Land Acquisition Act the remedy of the aggrieved person under law is to file a writ petition or a civil suit. It would mean to take resort to an action compelling the Land Acquisition Collector to make the reference either under Section 18 or Section 30 of the Land Acquisition Act. The concluding sentence does not mean that a regular civil suit for resolution of the dispute can be filed.

12. The reason is obvious. The Land Acquisition Act,1894 is a complete code. It envisages a speedy acquisition and settlement of claims pertaining to acquisition of land. Thus, any dispute pertaining to right, title or interest pertaining to acquired land has to be got adjudicated under the Land

Acquisition Act. As observed by the Division Bench of this court in *Pyare's* case (supra) (para 7) :-

> "7. Thus, under clause (b) of section 67, the interest of a Bhumidhar automatically gets extinguished when the land comprised in his holding is acquired under any law, such as the Land Acquisition Act, or any other Act relating to the acquisition of the land. Since the interest of the petitioner, assuming that he was a Bhumidhar, stands extinguished under section 67(b) of the Delhi Land Reforms Act, the revenue court ceases to have jurisdiction in the matter. Therefore, the application filed by the petitioner under section 185 of the Delhi Land Reforms Act seeking declaration of Bhumidhari rights was not maintainable and the Revenue Assistant rightly held that it had no jurisdiction to try the case. Both the Additional Collector and the Financial Commissioner also took the correct view in upholding the order of the Revenue Assistant. The decision of the Supreme Court in Hatti (supra) to which our attention has been drawn by Mr. Chandra is of no avail to the petitioner inasmuch as this was not a case where Bhumidhari rights of the appellant stood extinguished by virtue of the acquisition of the land under the Land Acquisition Act. Section 185 applies in a case where the Bhumidhar rights do not stand extinguished. Once the Bhumidhari rights stand extinguished, section 185 of the Delhi Land Reforms Act will have no application."

13. Before concluding I may note why the first appellate court has held that the remedy of the appellant was to challenge the vesting order by way of appeal before the Collector under the Delhi Land Reforms Act 1954.

14. Appellant change tracks before the appellate court. With reference to some unproved documents they urged that

land had not vested in the Union of India. They sought to urge that for the reason the LAC had refused to make a reference under Section 18 of the Land Acquisition Act 1894.

15. It is in relation to this submission that the appellate court has held that if award was not given effect to and land did not vest in the Union of India the appellants were free to invoke the remedy of appeal before the collector and challenge the vesting order.

16. I note that by virtue of Section 185 of the Delhi Land Reforms Act 1954, in respect of orders passed by revenue officers where appellate remedy is available under the statute, civil courts have no jurisdiction to entertain suits.

17. Be that as it may, the appellants have applied to the Land Acquisition Collector for making a reference under Section 18 of the Land Acquisition Act. The remedy of the appellants is to file a writ petition seeking a mandamus against the Land Acquisition Collector to refer the dispute under Section 18 of the Land Acquisition Act. If advised, appellants may file a suit for mandatory injunction claiming similar relief. Alternatively, if acquisition has lapsed and land is not vested in the Union of India the appellants have a remedy under the Delhi Land Reforms Act 1954. But appellants have to make up their mind and chose 1 forum.

18. In view of settled legal position and in view of the decisions of the Division Bench of this court in *Pyare's* case and of the Supreme Court in *Sharda Devi's* case no substantial question of law arose for consideration in the instant second appeal.

19. The appeal is dismissed.

December 06, 2007 **PRADEEP NANDRAJOG, J.**
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